

4. Defendant R.S. Contracting Company, Inc. (“R.S.”) is an employer with a place of business in Everett, Massachusetts.

5. Defendant R.S. is an “employer” within the meaning of 29 U.S.C. § 1002(5) and an employer in an industry affecting commerce within the meaning of 29 U.S.C. § 152(2), (6) and (7).

6. Defendant Denise J. Sellaro (“Sellaro”) is an individual having an address in Medford, Massachusetts.

7. Bricklayers and Allied Craftsmen Local Union No. 3, Massachusetts, Maine, New Hampshire, Rhode Island (“BAC Local 3”) is a “labor organization” within the meaning of 29 U.S.C. § 152(5).

8. At all material times, Defendant R.S. was obligated to make contributions to the Funds on behalf of certain employees pursuant to the terms of one or more collective bargaining agreements between it and BAC Local 3 and pursuant to the terms of Agreements and Declarations of Trust of the Massachusetts Bricklayers and Masons Health and Welfare, Pension and Annuity Funds to which Defendant R.S. was also bound to make contributions to the Funds on behalf of certain employees pursuant to an audit.

9. Pursuant to said agreements, Defendant R.S. must pay interest and liquidated damages for all delinquent contributions.

10. Defendant R.S. has failed to make required contributions to the Funds in violation of its agreement and Section 515 of ERISA, 29 U.S.C. § 1145.

WHEREFORE, Plaintiff demands that judgment enter against the Defendant R.S. Contracting Company, Inc. in accordance with Section 502(g)(2) of ERISA, 29 U.S.C. § 1132(g)(2):

- A. Awarding the Funds the following amounts:
- i. the unpaid health, pension and annuity contributions;
 - ii. interest on unpaid health, pension and annuity contributions at a rate of 1.5% per month from the date payment was due;
 - iii. liquidated damages pursuant to the collective bargaining agreements; and
 - iv. all costs and reasonable attorney's fees incurred by the Funds in connection with this action.

Count II
(as against Denise J. Sellaro)

11. Plaintiff hereby incorporates by reference as if stated herein paragraphs 1 through 10 of this complaint.

12. Pursuant to Section 1.15 of each of the Funds' respective Trust Agreements, contributions that are due and owing but not yet paid are defined as "plan assets" of the Funds.

13. Under ERISA § 3(31)(A), 29 U.S.C. § 1002(21)(A), a person is a fiduciary with respect to an ERISA plan to the extent he/she exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets.

14. Defendant Sellaro is the sole officer and Director of R.S.

15. Defendant Sellaro executed the CBA between R.S. and BAC Local 3.

16. Upon information and belief and at all material times to this action, Defendant Sellaro exercised control and discretion over the assets of R.S. including decisions regarding the payment of contributions due and owing by R.S. to the Funds.

17. As such, upon information and belief Defendant Sellaro is a fiduciary of the Funds, as defined in ERISA § 3(21)(A), 29 U.S.C.A. § 1002(21)(A).

18. Upon information and belief, at all material times to this action, Defendant

Sellaro, acting within her discretion as fiduciary under ERISA, breached her duty as fiduciary when she failed to make benefit contributions that were due and owing to the Funds.

19. As a result of the breach of her fiduciary duty, Defendant Sellaro is personally liable for the unpaid contributions owed to the Funds.

WHEREFORE, Plaintiff demands that judgment enter against Defendant Denise J. Sellaro in accordance with Section 502(g)(2) of ERISA, 29 U.S.C. § 1132(g)(2):

- A. Awarding the Funds the following amounts:
- i. the unpaid health, pension and annuity contributions;
 - ii. interest on unpaid health, pension and annuity contributions at a rate of 1.5% per month from the date payment was due;
 - iii. liquidated damages pursuant to the collective bargaining agreements; and
 - iv. all costs and reasonable attorney's fees incurred by the Funds in connection with this action.

Dated: September 8, 2016

Respectfully submitted,

For the Plaintiff,

/s/ Catherine M. Campbell
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CERTIFICATE OF SERVICE

I, Catherine M. Campbell, hereby certify that I caused a copy of the foregoing to be mailed this date via certified mail, return receipt requested, to the United States Departments of Labor and Treasury.

Dated: September 8, 2016

/s/ Catherine M. Campbell
Catherine M. Campbell, Esq.